



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.03.2017

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THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

**Cr1.O.P. (MD) No.23533 of 2016
and
Cr1.M.P (MD) No.12427 of 2016**

Kamalesh

: Petitioner/A1

-VS-

1.The State, represented
by the Inspector of Police,
Thirumangalam Town Police Station,
Madurai District.

: R1/Complainant

2.Thirumathi M.Malarvizhi
Tahsildar,
Taluk Office,
Thirumangalam,
Madurai District.

: R2/De-facto complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records comprised in FIR No.593 of 2016, dated 08.10.2016 pending on the file of the Inspector of Police, Thirumangalam Town Police Station, Madurai District and quash the same with regard to the petitioner.

For Petitioner : Mr.Rupert J. Barnabas

For Respondents : Mr.K.Anbarasan
Government Advocate

O R D E R

This petition has been filed to call for the records in FIR No.593 of 2016, dated 08.10.2016 pending on the file of the Inspector of Police, Thirumangalam Town Police Station, Madurai District and quash the same with regard to the petitioner.

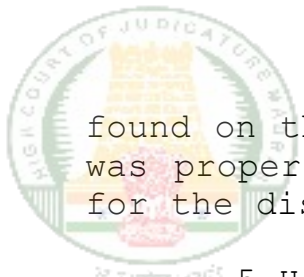
2.The case of the prosecution is that A2 had received Rs.1,000/- per head for 36 voters and gave a sum of Rs.36,000/- to the petitioner/A1 to delete 36 voters name from the voters list of Part No.155 from Veeraperumalpuram and it was came to light, when the Revenue Divisional Officer, Usilampatti, Madurai, conducted the enquiry.



3. The learned counsel appearing for the petitioner would submit that the petitioner is A1 in the above said case and that no complaint can be lodged by the 2nd respondent against the petitioner/A1, even if there is a breach of official duty in connection with preparation of electoral rolls and that a specific order should be made by the election commission or the Chief Electoral Officer of the State as contemplated under Section 32 of the Peoples Representation Act and that FIR has been lodged before the 1st respondent, without the knowledge of either of the two and in the absence of it, the FIR is liable to be quashed and that the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute a prima facie case attracting under Sections 167, 177, 408, 420, 468 and 171(E) of IPC against the petitioner/A1 and that no notice was issued to the petitioner for any enquiry and no enquiry was conducted by Thirumathi M.Suganya, the Revenue Divisional Officer, Usilampatti-cum-Electoral Registration Officer and no witnesses was examined in this case with regard to the alleged occurrence and it is absolutely silent over it and in over all to arrive at a finding that the petitioner/A1 had received Rs.1,000/- per head from A2 to delete those 36 voters name from the voters list and in the absence of all those materials, it is an abuse of process of law and that the Election Digital Signature Card (Pen Drive is an inbuilt Password given by the Election Commission of India through NICCA and when that is in the exclusive lock and key and custody and possession of the Thirumathi M.Suganya, the Revenue Divisional Officer of Usilampatti Division-cum-Electoral Registration Officer, it is humanly impossible for the petitioner to have entered her residence to get it and then enter into her high security office on 26.09.2016 at 12.40 a.m and open the computer and delete the names and thereafter, place back it to her possession in her residence and that the Data Entry Operators from Omne Agates Systems(P) Ltd, Chennai, are the persons, who are employed by the State Election Commission for election work of adding, deletion, corrections, preparation of final voters list and its publication and there are number of unit of computers in preparation of those works and the petitioner/A1 could not have identified or located under which particular computer the voters list of Veeraperumalpuram village of Thirumangalam Assembly Constituency is fed with and being operated and oust out the Data Operator and use the pen drive and delete the names of those 36 voters from the list and that the complaint is conceived with a mala fide intention and forcing the petitioner/A1 to stand for a full fledged trial and get acquitted would be a harassment and gross violation of his fundamental rights as contemplated under Article 21 of the Constitution of India. Hence, he prayed for quashing the FIR in Crime No.593 of 2016.

<https://hcservices.ecourts.gov.in/hcservices/>

4. The learned Government Advocate (Criminal side) appearing for the respondents would submit that since there are allegations



found on the complaint given by the de-facto complainant, the case was properly registered against the accused persons and he prayed for the dismissal of the petition.

5. Heard both sides and perused the materials available on record.

6. It is seen from the records that the petitioner is a Deputy Tasildhar (Election) and his duty is to assist the de-facto complainant, who is the District-cum-Assistant Election Registration Officer and A2 Karnthamalai, Village Assistant of Koodakovil Village, Madurai District, had received Rs.1,000/- per head and gave the same to the petitioner to delete 36 voters name from the voters list in part No.155 from Veeraperumalpuram and on enquiry, the petitioner had taken the Pen Drive and stole the Password and entered into the premises on 26.09.2016 at 12.40 hours and made entry into the computer with the aid of it and had deleted 36 voters name from the list. It is further seen from the records that the petitioner was given opportunity to explain his case, but he has not come forward to explain his case.

7. It is seen from the records that FIR has been registered against the accused persons on the following sections:

S.No	Section	Offence
01	167 IPC	Public servant framing an incorrect document with intent to casue injury
02.	177 IPC	Knowingly furnishing false information to a public servant
03.	408 IPC	Criminal breach of trust by a clerk or servant
04.	420 IPC	Cheating and thereby dishonestly inducing delivery of property, or the making, alternation or destruction of a valuable security
05.	468 IPC	Foregery for the purpose of cheating
06.	Section 171(E) IPC	Bribery in Election

8. In view of the above circumstances, whether the allegations stated in the FIR are true or not, can be decided only after full fledged trial and at this stage, it cannot be decided. Further, on reading of the FIR, there are prima facie materials available against the petitioner and the case is under investigation. Hence, this court is of the considered view that since, there are prima materials available against the petitioner,



this court is not inclined to grant the relief as sought for by the petitioner.

9.Hence, this petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub-Assistant Registrar

To

1.The Inspector of Police,
Thirumangalam Town Police Station,
Madurai District.

2. Tahsildar,
Taluk Office,
Thirumangalam,
Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

+One cc to M/s.Rupert J.Barnabas, Advocate, SR.No.14772

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RL/5C/4P/SKN/23.3.2017

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